

# ATTACHMENT A: FINDINGS AND CONCLUSIONS CITY OF RENTON SHORELINE MASTER PROGRAM PERIODIC REVIEW AMENDMENT

SMP Submittal accepted December 10, 2021, Ordinance No. 5976  
Prepared by Department of Ecology on December 13, 2022

## Use of this Document

Ecology's Findings and Conclusions (presented herein Attachment A), including reference to *Required and Recommended Changes* (Attachment B), provide the factual basis for Ecology's decision on the City of Renton's proposed amendment to their Shoreline Master Program (SMP) as a result of their SMP periodic review. This document is divided into three sections: **Findings of Fact**, which provides findings related to the City's proposed amendment, amendment history, and the review process, **Conclusions of Law**, and Ecology's **Decision and Effective Date** of the amendment. Attachment B outlines Ecology's identified required and recommended changes to the SMP amendment.

## Brief Description of Proposed Amendment

The City of Renton (City) is undergoing a statutorily required periodic review of their Shoreline Master Program (SMP) and has submitted an amendment to the Washington State Department of Ecology (Ecology) for approval. As part of this review, the City chose to utilize the joint review process set forth in WAC 173-26-104. On November 20, 2019, per WAC 173-26-104(3)(b), Ecology provided the City with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules. The City's final adopted ordinance incorporated most of Ecology's required and recommended changes provided as part of the initial determination; however, some required changes were not fully accepted, which are assessed in this document and Attachment B.

## FINDINGS OF FACT

### Need for amendment

The City's comprehensive update to their SMP went into effect in 2011. The current proposed amendment is needed to comply with the statutory deadline for a periodic review of the SMP pursuant to RCW 90.58.080(4).

### SMP provisions to be changed by the amendment as proposed

The amendment brings the SMP into compliance with requirements of the Shoreline Management Act (Act) or state rules that have been added or changed since the City completed their SMP comprehensive update, ensure the SMP remains consistent with amended comprehensive plans and regulations, and incorporate changes deemed necessary to reflect changed circumstances, new information, or improved data

The City's SMP consists of goals and policies located in Shoreline Management Element of the Comprehensive Plan and regulations codified in Chapter 4-3-090 of the Renton Municipal Code (RMC). Nonconforming provisions are codified in section RMC 4-10-095 and permit procedures are codified in

section RMC 4-9-190. The Official Shoreline Designation Map is maintained as a standalone document. Relevant portions of the City's critical areas ordinance (CAO) are incorporated into the SMP by reference pursuant to RMC 14-3-090.D.2.c.

The SMP regulates shoreline uses and development along Lake Washington, the Green River, Cedar River, May Creek, the Black River, and the Springbrook Creek. Lake Desire is also located within the City's potential annexation area and was pre-designated as part of the SMP comprehensive update.

The City prepared a checklist and consistency analysis that documents the proposed amendment. In addition to changes identified on the periodic review checklist, the City made the following changes:

#### *Shoreline Map*

- Map amendment to the shoreline environment designation at the Barbee Mill site. Areas that are currently Shoreline High Intensity will be re-designated as Shoreline Residential.

#### *RMC 4-3-090 Shoreline Regulations*

- Regulated shorelines. The City proposes to remove contiguous floodplain areas from shoreline jurisdiction and depend on the minimum shoreland definition provided under RCW 90.58.030(2)(d). As such the City will continue to regulate "lands within two hundred feet (200'), as measured on a horizontal plane, from the OHWM, or lands within two hundred feet (200') from floodways, whichever is greater" and all associated wetlands.
- Critical areas regulations. The City proposes to update the incorporation of CAO provisions to reference the 2020 version of the CAO. This includes updating the wetland buffer table to reflect the most current scientific information.
- Updates to reflect changes to the Renton Comprehensive Plan, including updating references to zoning designations and other development regulations.
- Updates to the Standards for Density, Setbacks, and Height for improved organization and clarity.
- The Shoreline Uses Table is amended to improve clarity and to add some use allowances for consistency with zoning code use allowances.
- The Shoreline Modifications regulations are amended to improve organization and add clarity to regulations. A requirement to obtain a shoreline variance for some buffer reductions is removed.
- The regulations for Nonconforming Uses, Activities, Structures, and Sites are amended to add clarity and improve implementation of these regulations.
- Definitions are updated for clarity.

#### *Amendment History, Review Process*

The City prepared a public participation program in accordance with WAC 173-26-090(3)(a) to inform, involve and encourage participation of interested persons and private entities, tribes, and applicable agencies having interests and responsibilities relating to shorelines. An important element of the public participation plan is the City's SMP Periodic Review project [website](#)<sup>1</sup>.

The City used Ecology's checklist of legislative and rule changes to review amendments to Chapter 90.58 RCW and department guidelines that have occurred since the SMP was comprehensively updated and

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<sup>1</sup>[https://rentonwa.gov/city\\_hall/community\\_and\\_economic\\_development/long\\_range\\_planning/planning\\_commission/shorelinemasterprogram](https://rentonwa.gov/city_hall/community_and_economic_development/long_range_planning/planning_commission/shorelinemasterprogram)

determine if local SMP amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i). The City also reviewed changes to the comprehensive plan and development regulations to determine if SMP policies and regulations remain consistent with them in accordance with WAC 173-26-090(3)(b)(ii). The City considered whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data in accordance with WAC 173-26-090(3)(b)(iii). The City consulted with Ecology and solicited comments throughout the review process.

*Joint local/state comment period under WAC 173-26-104*

The City and Ecology held a joint local/state comment period on the proposed amendments following procedures outlined in WAC 173-26-104. The comment period began on September 28, 2018 and continued through October 29, 2018. A joint local/state public hearing was held on October 17, 2018. Following the joint local/state public hearing, the City elected to extend the comment period until December 7, 2018 to allow for additional public engagement. The City also held two public workshops on November 15, 2018 and November 29, 2018 at Renton City Hall.

The City provided notice to local parties, including a statement that the hearings were intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). Ecology distributed notice of the joint comment period to state interested parties and to affected tribes on September 27, 2018.

Two comments were received on the proposed amendments: a letter from the Muckleshoot Indian Tribe and oral testimony from a Lake Washington property owner.

The Muckleshoot Tribe's comments request that the Tribe receive notice of all shoreline applications, that an updated Cumulative Impacts Analysis be conducted, that new information regarding artificial lighting along the Cedar River be incorporated into the SMP, and that the Restoration Plan be updated. The Tribe also raised concerns with the City's proposed modifications to RMC 4-3-050.C.3, regarding the application of critical areas exemptions within the shoreline jurisdiction and its consistency with WAC 173-27.

The City prepared a comment response matrix, dated January 4, 2019, which summarizes the comments and provides the City's response. The City found that updates to the Cumulative Impacts Analysis and Restoration Plan, conducted under the SMP comprehensive update, were both not required as part of this SMP periodic review and not necessary based upon the scope of the proposed changes. The City did modify the amendment to restrict exterior lighting from shining on waterbodies.

A commenter at the public hearing requested that fences be allowed to extend to the water's edge and that prohibition on use of non-native vegetation be modified to only non-native invasive vegetation. The City incorporated both of these requests into the amendment, but they were later removed as a result of Ecology's review and initial determination recommendations.

Ecology has reviewed the comments received along with the City's responses, during our initial determination process and again as part of this state review process. Ecology finds that the City considered comments and incorporated additional amendments to address issues raised during the comment period. While we found the City's responses to be generally consistent with statutory and rule obligations required of SMP amendments, we did provide required and recommended changes related to the incorporation of critical areas exemptions as part of our initial determination that further addressed Tribal comments received. These changes were accepted by the City prior to local adoption.

### *Initial Determination of Consistency*

As part of this review, the City chose to utilize the joint review process set forth in WAC 173-26-104. After the joint local/state comment period and hearing, and consideration of the comments received, the City submitted the proposed amendment to Ecology for initial review. Ecology is required under WAC 173-26-104(3)(b) to provide the City with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules.

Ecology received the City's submittal for an initial determination of consistency and determined it to be complete on May 6, 2019. Based on discussions between Ecology and City staff, the City submitted a revised proposal on September 23, 2019. In response, Ecology provided the City a formal written statement dated November 20, 2019, documenting an initial determination of consistency based on the City's revised proposal.

Ecology's initial determination considered the record, including comments received and the City's responses to these comments, and concluded that portions of the proposal were not consistent with applicable laws and rules. The November 20, 2019 initial determination described specific areas of concern and changes necessary to the City's SMP amendment. Ecology identified six (6) required changes to address issues with the incorporation of critical area regulations, allowances for fences, and provisions for delineating and rating wetlands. Ecology also identified fourteen (14) recommended changes to improve clarity of the proposed amendment. After review by Ecology of the complete initial record submitted and all comments received, Ecology determined that the City's proposed amendments, subject to and including Ecology's required changes, could be considered consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). Ecology concluded that if the issues identified as required and recommended changes were resolved prior to local adoption, we anticipated being able to approve the City's SMP Periodic Review amendment upon formal submittal per WAC 173-26-110.

The City considered the changes identified in Ecology's initial determination and accepted five (5) of the required changes and partially accepted one of the required changes regarding the critical areas ordinance incorporation. The City accepted all recommended changes.

### *Final Submittal*

With passage of Ordinance #5976, on August 3, 2020, the City authorized staff to forward the proposed amendments to Ecology for formal approval. Due to some confusion over the final steps in the joint review process, the amendment was then codified at the local level, but was not formally submitted to Ecology for final review and action. Once this issue was brought to the City's attention, they submitted the amendments to Ecology on November 30, 2021, and Ecology verified the submittal as complete on December 10, 2021.

Once Ecology completed our substantive review of the SMP submittal and identified some remaining issues relevant to our decision we met with the City to collaborate on potential required and recommended changes. The City was able to provide proposed language and suggested edits and are supportive of this conditional approval.

At the conclusion of our formal review, Ecology's Director must decide to approve the amended program as submitted, approve it with required changes and/or recommended changes, or deny approval.

## Consistency Review

### *Consistency with Chapter 90.58 RCW*

The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

### *Consistency with applicable guidelines (Chapter 173-26 WAC, Part III)*

The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions). This includes review for compliance with the SMP amendment criteria found in WAC 173-26-201(1)(c) along with review of the SMP Periodic Review Checklist completed by the City.

### *Consistency with SEPA Requirements*

The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendments on May 23, 2019. Ecology did not comment on the DNS.

### *Other Studies or Analyses supporting the SMP amendment*

Ecology also reviewed supporting documents prepared for the City in support of the SMP amendment. These documents include a public participation plan and a periodic review checklist.

## Summary of Issues Identified by Ecology as Relevant to Its Decision

Ecology is required to review all SMPs to ensure consistency with the Shoreline Management Act (SMA) and implementing rules including WAC 173-26, State Master Program Approval/Amendment Procedures and Master Program Guidelines. WAC 173-26-186(11) specifies that Ecology “shall insure that the state’s interest in shorelines is protected, including compliance with the policy and provisions of RCW 90.58.020.”

Based on review of the proposed amendments to the SMP for consistency with applicable SMP Guidelines requirements and the Shoreline Management Act, and consideration of supporting materials in the record submitted by the City, Ecology has identified issues relevant to its decision, which are outlined below and in Attachment B:

### *Critical Areas Ordinance (CAO) Incorporation*

Ecology’s review of the City’s CAO incorporation has been found to be generally consistent with the SMA and applicable SMP Guideline requirements, except for the incorporation language found in RMC 4-3-090D.2.

**Finding.** Ecology finds that local governments may incorporate regulations from other plans and code into the SMP as long as a specific, dated version of that code is referenced [WAC 173-26-191(2)(b)]. The City intends to meet the requirement to provide for the management of critical areas by incorporating regulations from the City’s critical area ordinance (CAO) in RMC 4-3-050. However, the City does not reference a specific, dated version of this code section. This requirement was identified during the SMP amendment initial determination and was listed as a required change but was inadvertently omitted from the locally adopted amendment package.

Ecology has identified a change necessary for consistency with WAC 173-26-191(2)(b) [Attachment B, Req-1] specifying the dated version of the City's Critical Areas Code to be referenced within the updated SMP.

**Finding.** Ecology finds that local governments should “promote human uses and values” when planning for critical areas [WAC 173-26-221(2)(b)(v)]. Ecology finds that the City's proposed incorporation of the CAO includes a provision ensuring that should there be conflict between the CAO and the SMP, the more protective regulations shall prevail. Ecology finds that some incorporated CAO regulations could conflict with specific allowances in the SMP to foster water-oriented uses.

Ecology has identified a change necessary for consistency with the requirement to “promote human uses and values” in WAC 173-26-221(2)(b)(v) and with the state policy of “planning for and fostering all reasonable and appropriate uses” in RCW 90.58.020. [Attachment B, Req-2].

#### *Additional Recommendations*

Ecology has also determined that the SMP could benefit from incorporation of the recommended changes identified in Attachment B. If accepted the SMP will remain consistent, but these changes are not necessary for consistency with the SMA or implementing guidelines. Ecology identified three (3) recommended change to provide clarity and improved implementation [See detailed rationale in Attachment B, Items Rec-1, Rec-2, and Rec-3]. These recommendations are related to:

- 1) Adding language to the Shoreline Use table to improve internal consistency.
- 2) Adjusting the substantial development cost threshold to reflect the 2022 increase.
- 3) Removing unnecessary footnotes from the Critical Areas Exemptions table.

## CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the City's proposed amendment with incorporation of Ecology's required changes as shown in Attachment B, can be considered consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions).

Ecology concludes that the proposed amendment with acceptance of Ecology's required changes satisfies the criteria for approval of amendments found in WAC 173-26-201(1)(c). This includes the conclusion that approval of the SMP amendment will not foster uncoordinated and piecemeal development of the state's shorelines (WAC 173-26-201(1)(c)(i) and will assure no net loss of shoreline ecological functions will result from implementation of the amended master program (WAC 173-26-201(1)(c)(iv) and WAC 173-26-186(8)).

Ecology concludes that those SMP segments relating to shorelines of statewide significance continue to provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5)).

Ecology concludes that the City has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 and WAC 173-26-104 regarding public and agency involvement in the SMP review and amendment process, including conducting a public hearing, providing notice, consultation with parties of interest, and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the City has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City's SMP submittal to Ecology was complete pursuant to the requirements of WAC 173-26-090, WAC 173-26-104, and WAC 173-26-110.

Ecology concludes that we have complied with the state's procedural requirements for review and approval of shoreline master program amendments as set forth in RCW 90.58.090 and WAC 173-26-104, WAC 173-26-110, and WAC 173-26-120.

Ecology concludes that with this action the City has completed the required process for periodic review in accordance with RCW 90.58.080(4) and applicable state guidelines (WAC 173-26).

## DECISION AND EFFECTIVE DATE

Based on the preceding, we find the proposed SMP periodic review amendment will be consistent with the policy of the Shoreline Management Act, the applicable guidelines and implementing rules, once the required changes set forth in Attachment B are accepted by the City. Ecology has also determined that the SMP could benefit from incorporation of the recommended changes identified in Attachment B. The City may choose to adopt some or all of the recommended changes. Pursuant to RCW 90.58.090(2)(e), the City must notify Ecology of the approval or denial of both the required and recommended changes.

As provided in RCW 90.58.090(2)(e)(ii) the City may choose to submit alternatives to all or part of the changes identified by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final action on the amendment.

Upon written receipt of the City's acceptance of Ecology's required changes and decision to include, propose alternative language to, or reject Ecology's recommended changes, Ecology will take final action on this SMP amendment. Ecology's approval of the proposed amendment, with required changes or approved alternatives, will be effective 14 days from Ecology's final action approving the amendment. Ecology's final action will be a letter verifying receipt of written notice that the City has agreed to the required and recommended changes identified in Attachment B or approval of proposed alternative language.